Abg Firdaus bin Abg Jemain & Anor v Public Prosecutor and another appeal

A

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS J-05–224–08 OF 2011 AND J-05–225–08 OF 2011
APANDI ALI, AZIAH ALI AND HAMID SULTAN JJCA
25 JUNE 2013

B

C

Criminal Procedure — Mens rea — Trafficking in dangerous drugs — Accused persons had plastic packets of dangerous drugs strapped to their bodies under their clothing — Whether inference irresistible that they knew they were carrying drugs — Whether act of transporting drugs and quantity involved completed offence of trafficking

D

The first and second appellants were convicted and sentenced to death by the High Court for trafficking in, respectively, 666g and 681.8g of methamphetamine which was found strapped to their bodies under the clothes they were wearing when they were arrested by a police party. The appellants were passengers in a rented taxi at the time of the arrest and according to the testimony of a member of the police party they were 'trembling with fear' when they were being searched. Given the evidence of their actual physical possession of the drugs and the way in which it was concealed on their person, the trial judge concluded that the appellants knew they were carrying drugs and in view of the large quantity of the drug involved, the statutory presumption of trafficking was invoked against them. In their defence the appellants claimed they were merely doing an errand for a third party for a fee and that they were never told they were conveying drugs. They mentioned the names of several persons they had met in connection with their 'errand'. The High Court found the many characters the appellants had named was only raised during the defence stage of the trial and not during the prosecution case raising the inference that they were afterthoughts. The trial judge found that the evidence that the appellants looked scared when they were being searched corroborated the fact they knew they were carrying drugs; that the defence was essentially a mere denial and that the appellants had failed to rebut the presumption of trafficking. In their instant appeal against conviction and sentence, the appellants contended that the trial judge ought to have considered the existence of the third parties and that the appellants were innocent victims used by a drug syndicate to transport the drugs.

E

F

G

H

I

Held, dismissing the appeals:

(1) The appellants were found to have had actual physical possession of the drugs strapped to their bodies and concealed under their clothing. An

irresistible inference that they had the prerequisite knowledge that the plastic packets —the contents of which were visible to the naked eye — contained dangerous drugs could be made from the method employed to transport the drugs. The attempt to carefully conceal the drugs to avoid detection was corroborative evidence of knowledge (see para 13).

(2) The evidence of the appellants' conduct at the time of their arrest was not very significant as the drugs were recovered from the bodies of the appellants from which knowledge of the drugs could be reasonably inferred. In any event, the trial judge did not err in taking into consideration their conduct together with the manner in which the drugs were carried in coming to the finding that the appellants knew of the drugs in their possession (see para 14).

(3) For the offence of trafficking under s 39B of the Dangerous Drugs Act 1952, the issue of ownership of the drugs was irrelevant. There was merit in the trial judge's finding that the involvement of third parties was an afterthought. Once there was the act of transportation and so long as its purpose was to transfer possession for some other person in contradistinction to an intention to keep the drug solely for one's own consumption, the offence was completed. Whether the transporter achieved his purpose was irrelevant to his guilt for the offence of trafficking. An offence under s 39B was proven when the court was satisfied beyond reasonable doubt that the offender was in possession of dangerous drugs. With proof of care and custody being the prerequisites, and once this minimal element was proven and the operation of the presumption under s 37(da) was triggered, the offence of trafficking was established (see para 15).

[Bahasa Malaysia summary

Perayu pertama dan kedua disabitkan dan dijatuhkan hukuman mati oleh Mahkamah Tinggi kerana mengedar 666g dan 681.8g methamphetamine yang dijumpai terikat pada badan mereka di bawah pakaian yang mereka pakai ketika ditahan oleh pasukan polis. Perayu-perayu merupakan penumpang-penumpang teksi sewa ketika ditahan dan menurut keterangan ahli pasukan polis, mereka menggigil ketakutan ketika diperiksa. Melihat pada keterangan mengenai milikan fizikal sebenar dadah tersebut dan cara kesemuanya disembunyikan pada badan mereka, hakim perbicaraan memutuskan bahawa perayu-perayu tahu bahawa mereka membawa dadah dan melihat pada kuantiti besar dadah yang terlibat, anggapan statutori pengedaran dibangkitkan terhadap mereka. Dalam pembelaan mereka, perayu-perayu menghujahkan bahawa mereka hanya menjalankan suruhan oleh pihak ketiga bagi suatu bayaran dan mereka tidak diberitahu bahawa mereka membawa dadah. Mereka menyatakan beberapa nama orang-orang yang mereka temui berkenaan 'suruhan' tersebut. Mahkamah Tinggi mendapati bahawa banyak watak-watak yang dinyatakan oleh perayu-perayu

hanya dibangkitkan semasa peringkat pembelaan dalam perbicaraan dan bukan ketika kes pendakwaan membangkitkan inferens bahawa kesemuanya adalah sesuatu yang difikirken kemudian. Hakim perbicaraan memutuskan bahawa keterangan mengenai perayu-perayu kelihatan takut ketika mereka diperiksa menyokong fakta bahawa mereka tahu bahawa mereka membawa dadah; bahawa pembelaan hanyalah satu penafian semata-mata dan perayu-perayu gagal untuk mematahkan anggapan pengedaran. Dalam rayuan terhadap sabitan dan hukuman ini, perayu-perayu menghujahkan bahawa hakim perbicaraan patut mempertimbangkan kewujudan pihak ketiga dan bahawa perayu-perayu merupakan mangsa-mangsa tidak bersalah yang digunakan oleh sindiket dadah untuk membawa dadah tersebut.

Diputuskan, menolak rayuan-rayuan:

(1) Perayu-perayu dijumpai mempunyai milikan fizikal dadah tersebut yang terikat pada badan-badan mereka dan tersembunyi di bawah pakaian mereka. Kesimpulan yang amat kuat adalah bahawa mereka mempunyai pengetahuan awalan bahawa paket-paket plastik —yang mana kandungannya jelas pada mata kasar — mengandungi dadah berbahaya boleh dibuat daripada cara yang digunakan untuk membawa dadah tersebut. Percubaan untuk menyembunyikan dadah tersebut untuk mengelakkan daripada dikesan menyokong keterangan pengetahuan (lihat perenggan 13).

(2) Keterangan mengenai kelakuan perayu-perayu pada masa mereka ditangkap adalah tidak berapa penting kerana dadah tersebut diperolehi daripada badan perayu-perayu yang mana pengetahuan mengenai dadah boleh disimpulkan. Dalam apa jua keadaan, hakim perbicaraan tidak terkhilaf dalam mempertimbangkan kelakuan mereka bersama-sama dengan cara dadah tersebut dibawa dalam membuat dapatan bahawa perayu-perayu mengetahui mengenai dadah yang dalam milikan mereka (lihat perenggan 14).

(3) Bagi kesalahan mengedar di bawah s 39B Akta Dadah Berbahaya 1952, isu pemilikan dadah adalah tidak relevan. Terdapat merit dalam dapatan hakim perbicaraan bahawa penglibatan pihak ketiga adalah satu fikiran semula. Apabila terdapat perlakuan pengangkutan dan selagi tujuannya adalah untuk memindahkan milikan bagi orang lain berbanding dengan niat untuk menyimpan dadah semata-mata bagi penggunaan seseorang, kesalahan adalah sempurna. Sama ada pembawa mencapai tujuannya adalah tidak relevan kepada kebersalahannya bagi kesalahan mengedar. Satu kesalahan di bawah s 39B dibuktikan apabila mahkamah berpuas hati melampaui keraguan munasabah bahawa pesalah mempunyai milikan dadah berbahaya. Dengan bukti penjagaan dan pemilikan sebagai pra-syarat, dan apabila elemen minimum ini dibuktikan dan

operasi anggapan di bawah s 37(da) dibangkitkan, kesalahan mengedar berjaya dibuktikan (lihat perenggan 15).]

Notes

For a case on trafficking in dangerous drugs, see 5(2) *Mallal's Digest* (4th Ed, 2012 Reissue) para 2784.

Cases referred to

Chan Pean Leon v PP [1956] 1 MLJ 237 (refd)
Isidro Leonardo Quito Cruz v PP [2013] 2 MLJ 1; [2013] 2 CLJ 1025, FC (refd)
Koh Tiong Hock v PP [2011] 4 MLJ 40; [2011] 2 CLJ 377, CA (refd)
Lau Chi Sing v PP [1989] 1 MLJ 5; [1988] 1 LNS 187, CA (refd)
Parlan bin Dadeh v PP [2008] 6 MLJ 19; [2009] 1 CLJ 717, FC (refd)
PP v Lin Lian Chen [1992] 2 MLJ 561, SC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457, FC (refd)
Saad Ibrahim v PP [1968] 1 MLJ 158 (refd)
Teh Hock Leong v PP [2008] MLJU 284; [2008] 4 CLJ 764, CA (refd)
Wjchai Onprom v PP [2006] 5 MLJ 415; [2006] 3 CLJ 724, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 37(da), 39B, 39B(1)(a), First Schedule

Appeal from: Criminal Trial No MT(3) 459–03 of 2010 (High Court, Johor Bahru)

Jagdish Kaur (AS Jag & Co) for the first appellant.
KA Ramu (KA Ramu Vasanthi & Associates) for the second appellant.
Nadia Hanim bt Mohd Tajuddin (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Aziah Ali JCA (delivering judgment of the court):

[1] The appellants were each charged with an offence of trafficking in dangerous drugs under s 39B(1)(a) punishable under s 39B(2) of the Dangerous Drugs Act 1952 ('the Act'). The first appellant, Abg Firdaus bin Abg Jemain was charged with trafficking in 666g of methamphetamine while the second appellant, Allison ak Isa was charged with trafficking in 681.8g of the same drug on 14 July 2009 at about 9am at the Terminal Feri The Zone, Stulang Laut in the District of Johor Bahru. They were jointly tried at the High Court Johor Bahru. Both were found guilty and convicted and sentenced to death. The appellants appealed to this court against their convictions and sentences. Having perused the appeal records and considered the submissions from both learned counsel for the appellants and the learned deputy public

prosecutor ('DPP') for the respondent, we found no merit in their appeals. We dismissed both appeals and affirmed the convictions and sentences for the reasons stated below.

THE PROSECUTION CASE

[2] The salient background facts gleaned from the prosecution case showed that on 14 July 2009 at about 12.30am SP3 Inspector Sufian Mohd Noh received information concerning drug trafficking activity that was expected to take place between 8–10 am at the Ferry Terminal Zone at Stulang Laut. SP3 lodged a first information report ('FIR') exh P12. Together with his personnel SP3 proceeded to the Ferry Terminal Zone and arrived there at approximately 8am. His personnel were instructed to look out for a silver coloured Mercedes Benz Registration No WMQ 123. At about an hour later they saw the said car entering the target area. The car was stopped and inside the car were three persons namely the driver Udia Kumar ('SP2'), and two passengers who were identified as the first and second appellants. All three were arrested. SP3 searched the first appellant and underneath his shirt found strapped to the front of his body two transparent plastic packets and at the back three transparent plastic packets suspected to contain dangerous drugs. A similar discovery was made upon inspection done on the body of the second appellant. SP3 did not remove the items discovered. According to SP3 the two appellants were trembling in fear when the search was being carried out on them. A search on the car and the driver SP2 did not reveal anything incriminating. The appellants and SP2 and the Mercedes car (photographs exh P9A–9D) were then brought back to the Larkin Police Station and the two appellants were taken to the operations room. The investigating officer ('IO') Inspector Ashadi ('SP5') was already present. Photographs of the two appellants with the plastic packets strapped to their bodies were taken. The appellants were then instructed to remove the packets after which photographs of the drugs were taken. SP3 prepared search lists in respect of each the appellant which were signed by SP3 and the appellants (exh P13(A) and (B)). A piece of paper (exh P14) on which were written what appeared to be instructions was seized from the right pocket of the jeans worn by the second appellant. The exhibits seized (P6A(1)–P7D(1) were then handed over to the IO SP3 prepared the 'borang serah menyerah' exh P16(A) and (B) and P17). According to SP3 the appellants' passports were taken by the *Bahagian Siasatan*, Bukit Aman. The IO SP5 prepared a list of items he received from SP3 (exh P15). The identity cards and passports of the appellants were also seized and SP5 noted this in his investigation diary. The IO SP5 testified that he saw five plastic packets strapped to the bodies of each appellant using yellow coloured rubbery material. He requested one Supt Dorairajah to take photographs of both appellants with the plastic packets still strapped to their bodies (photographs exh P11(A)–(H) at pp 273–276 of the appeal record). The plastic packets were

then removed from the bodies of the appellants. The five plastic packets seized from the first appellant were kept separate from the other five plastic packets seized from the second appellant. Photographs of the plastic packets were then taken. SP5 kept the plastic packets in two marked envelopes. In envelope marked 'A' were five packets of drugs (exh A1–A5) recovered from the first appellant. In envelope marked 'B' were another five packets of drugs (exh B1–B5) which were recovered from the second appellant. SP5 kept the exhibits he received from SP3 in a locked steel cabinet in his office. On 20 July 2009 SP5 handed over the drugs to SP4 the chemist for analysis. SP4 prepared a chemist report (exh P24). The report exh P24 shows that the five plastic packets in envelope marked 'A' contained 666g of methamphetamine and the five plastic packets in the envelope marked 'B' contained 681.8g of the same drugs. SP4 confirmed that methamphetamine is a dangerous drug listed under the First Schedule to the Act.

[3] SP2 the driver of the Mercedes car testified that the car belonged to Syarikat Metro Travel Tour Services Sdn Bhd. SP2 worked as a limousine driver with the company since 2006. According to SP2, on 14 September 2009 at about 2 or 3am he received a call from his manager one Ang Khan Soon about a booking for a trip from One World Hotel, Damansara to Johor Bahru. He arrived at the hotel at about 3.30–4.45am. He waited for about 1 1/2 hours and then saw three persons one of whom was a bellman in uniform approaching the car. SP2 identified two of the persons as the first and second appellants. There were two bags which were placed inside the boot of the car. Both the appellants sat in the back of the car. The bellman told him to drive to the duty free near the ferry terminal in Johor Bahru. They arrived at their destination at about 8–8.30am. When they reached the counter at the jetty the car was surrounded by the police and he and the two appellants were then handcuffed while they were still in the car. They were then taken out of the car and the police inspected the car. SP2 was searched and his handphone and some money were seized. According to SP2 the two appellants were taken by the police in a police vehicle to the police station. He was taken to the same police station in the Mercedes car driven by a police personnel. At the police station SP2 saw the two appellants with the drugs strapped to their bodies using yellow coloured cloth when the police took photographs of them as shown in exh P11(A)–11(H).

[4] At the end of the prosecution's case the learned judicial commissioner was satisfied based on the chemist report that the prosecution had proved that the contents of the plastic packets were dangerous drugs. His Lordship found that there was direct evidence of actual physical possession of the drugs and following the case of *Chan Pean Leon v Public Prosecutor* [1956] 1 MLJ 237 His Lordship found that the two appellants had custody and control of the drugs. On the issue of knowledge the learned judicial commissioner followed the case of *Koh Tiong Hock v Public Prosecutor* [2011] 4 MLJ 40; [2010] MJLU 668;

[2011] 2 CLJ 377; [2010] 1 LNS 689 and considered that the manner in which the plastic packets were strapped to the appellants' bodies and concealing them from view by their clothes raised a reasonable inference that the appellants knew that the plastic packets contained dangerous drugs. His Lordship further found that the contents of the plastic packets were visible to the naked eye (see photographs at p 294 of the appeal record). The learned judicial commissioner invoked the presumption of trafficking under s 37(da) of the Act. Alternatively His Lordship found that based on the huge amount of the drugs, s 2 of the Act applies. Upon a maximum evaluation of the prosecution evidence His Lordship found that the prosecution had proved a prima facie case against both the appellants and called on them to enter their defence. On the evidence we find that the learned judicial commissioner had correctly invoked the statutory presumption under s 37(da) of the Act. The appellants having been found to be in actual possession of the large quantity of the drugs it was safe to infer that this was not a case of mere passive possession.

THE DEFENCE CASE

[5] In their defence both the appellants denied knowledge of the drugs or that they were trafficking in dangerous drugs. The first appellant testified that he was unemployed at the time when he met a friend by the name of 'Wiwi' who had asked him whether he wanted to work. Wiwi then introduced him to a Chinese man named 'Simon' who offered him a job as an escort overseas with a salary of RM5,000 a month. He agreed to the offer and Wiwi and Simon took him to apply for a passport and Simon told him that he would be flying to China the next day. Both he and Simon flew to China where Simon introduced him to a Malaysian Chinese woman. This woman then took him to an apartment where he met another Chinese woman, a Chinese man and also the second appellant.

[6] The second appellant testified that his friend Douglas introduced him to one 'Ah Keong' who offered him and Douglas a job to escort certain people with a salary of RM5,000 per month. All of them went to apply for passports. The next day Ah Keong gave him and Douglas flight tickets to Hong Kong and HK$600 each. Ah Keong gave him a telephone sim card and instructed him to call one 'Peter' on arrival in Hong Kong. Both Douglas and the second appellant flew to Hong Kong and upon arrival he called Peter. Peter fetched them from the airport and took them to a hotel where they checked in. Peter told Douglas that one 'Ah Lee' will fetch him the next morning. The next day Peter came and took Douglas away leaving the second appellant at the hotel. That night Peter came to see the second appellant and told the second appellant that he will come again the next day. When Peter came the next day the second appellant checked out of the hotel and together with Peter they went to an

apartment. At the apartment there was one male and one Chinese female. That evening the first appellant arrived at the apartment. Peter told them that they had a job early the next morning.

[7] The next morning the first and second appellants together with a Chinese woman called 'Ah Moi' flew to Bali and from there they flew to Jakarta. The next morning both of them flew to Malaysia and on arrival the second appellant called a number given to him by Ah Moi. He was instructed to take a taxi to One World Hotel. At One World Hotel they checked into a room under the first appellant's name. While the second appellant was having a bath, there was a call and the first appellant answered the call. The call was from a Chinese male who asked him for his room number. This male Chinese then came up to their room. The second appellant then came out and spoke to this Chinese man. According to the second appellant this Chinese man was 'Ah Lee' who he had met earlier in China. Then another Chinese man came while the first appellant was taking his bath. This Chinese man was unknown to the second appellant but according to the first appellant he was Simon. Simon was carrying a bag. Ah Lee then took out plastic packages from his bag and Simon took out what looked like bandages. According to the second appellant Simon told him that the contents of the plastic packages were expensive and had to be carried on their bodies tied with the bandages because he did not want them to be robbed. Both Ah Lee and Simon then strapped the plastic packages to his body. They did the same to the first appellant. They gave the same reason to the first appellant why the plastic packages had to be strapped to his body. According to the first appellant the contents of the plastic packets were white in colour. Simon told him to deliver the packets to his company and after that he would be paid RM5,000 and given flight ticket to return to Sarawak. Both of them got dressed and they were given some money and told to go down where they met SP2. After they had left the hotel with SP2 the first appellant received a call from Simon who told him not to stop anywhere but they did stop mid journey because SP2 had wanted to ease himself. They then continued with their journey until they were stopped by SP3 and his party. The police then checked their bodies and the car and then they were taken to the police station.

THE FINDINGS BY THE HIGH COURT

[8] The learned judicial commissioner found that the numerous characters such as 'Wiwi', 'Simon', 'Kakak', 'Amoi', 'Douglas', 'Ah Keong', 'Peter' and 'Ah Lee' were never mentioned during the prosecution case. His Lordship found that the failure of the defence to raise these characters at the earliest opportunity during the prosecution case raises an inference that these characters were an afterthought and a 'recent invention'. His Lordship relied on the case of *Public Prosecutor v Lin Lian Chen* [1992] 2 MLJ 561 wherein the Supreme Court said as follows:

> The trial judge appreciated correct law when he held, as he did in fact hold, that the defence are entitled, through cross-examination of prosecution witnesses, to put its case at the earliest possible stage. Indeed, it behoves the defence to do so, for we need hardly say that if a defence is sprung in court for the first time when the accused makes his defence from the witness box or the dock, so that the prosecution is taken by surprise, the accused runs the risk of being criticised for having kept his defence 'up his sleeve', so to speak, and it being branded as a recent invention.

The learned judicial commissioner ruled that a defence raised too late and only during the defence case ought not to be given weight.

[9] His Lordship referred to the evidence of SP3 who testified that the appellants appeared scared when they were inspected. SP3 said as follows:

> Semasa pemeriksaan ke atas OKT1 dan OKT2 di Stulang Laut mereka menggigil ketakutan.

The learned judicial commissioner found that the conduct of the appellants raised a reasonable inference that they had a guilty mind that they were carrying dangerous drugs. His Lordship rejected the defence that they were scared because they thought that they were being robbed. His Lordship also rejected the contention by the second appellant that the plastic packets were mixed up by the police and accepted the evidence of SP3 that the plastic packets recovered from the first appellant were separated from the plastic packets recovered from the second appellant. His Lordship further noted that this issue was only raised during the defence of the second appellant and was an afterthought. Having considered the defence case His Lordship found that the defence was a mere denial and the appellants had failed to raise a reasonable doubt in the prosecution case and had failed to rebut the presumption under s 37(da) of the Act. Thereupon the learned judicial commissioner found the two appellants guilty as charged and convicted and sentenced them to death.

THE APPEAL

[10] There were essentially two issues raised by learned counsel in submissions before us ie that the learned judicial commissioner erred in rejecting the defence which showed the involvement of third parties in relation to the drugs, and that the appellants had no knowledge that the plastic packets contained dangerous drugs.

[11] Learned counsel for the first appellant submitted that the drugs belonged to third parties. Counsel submitted that the learned judicial commissioner erred in his finding that the defence which raised the involvement of third parties was an afterthought when the prosecution had not challenged the existence of these third parties. The existence of third parties was established through SP5 where in cross-examination SP5 testified that the

booking for the Mercedes Benz was made and paid for by an unknown Chinese man. Counsel submits that the learned judicial commissioner ought to have considered the existence of the third parties and whether the explanation was sufficient to raise a reasonable doubt (*Saad Ibrahim v Public Prosecutor* [1968] 1 MLJ 158). On the issue of knowledge it was submitted that there was doubt that the first appellant had knowledge of the dangerous drugs. It was submitted that the first appellant was not informed by the third parties about the contents of the plastic packets. Counsel submitted that the visibility of the contents of the plastic packets was insufficient for the learned judicial commissioner to infer knowledge. With regard to the first appellant's conduct at the time of arrest, it was submitted that the conduct of the first appellant was reasonable since he had thought that they were being robbed. Therefore the inference that is most favourable to the first appellant ought to be drawn (*Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457). For the second appellant learned counsel submitted that the prosecution did not challenge the existence of Ah Lee. It was submitted that the learned judicial commissioner had erred in failing to consider that the drugs belonged to Ah Lee and that the second appellant had been used by a syndicate to carry the drugs without him knowing what he was carrying. There was a reasonable probability that the second appellant was an innocent carrier who was in passive possession of the drugs.

[12] We had considered the submissions made before us. We find that the facts in this appeal on the manner in which the drugs were carried were essentially similar to the facts in the case of *Koh Tiong Hock v Public Prosecutor* cited by the learned judicial commissioner. In that case the appellant was waiting to exit departure gate No 6 at the Bayan Lepas International Airport, Penang when he was arrested. A body search was carried out on him at the police station and eight transparent plastic packets containing a total of 7,468 tablets, which the chemist confirmed to be dangerous drugs were found taped to his abdomen, three each in the front and back and one on each side with three body braces strapped over them wrapping them around his body. He wore his t-shirt over them and also a blue jacket outside. The Court of Appeal found that the photographs of the exhibits showed how visible the drug tablets were to the naked eye. Therefore it was most unlikely for the appellant not to have seen them when the packets were taped to the front and sides of his abdomen. The manner the packets were taped to the appellant's body, covered with braces and concealed under his t-shirt and jacket to avoid detection supports an inescapable inference that he must have known that they contained dangerous drug. The overt act of concealing the drugs on his person reasonably supported the existence of criminal purpose proscribed by the Act. The same facts also gave rise to a strong inference that the appellant was aware of the drug possessed and the power of disposal over it which provided prima facie proof of actual trafficking. The Court of Appeal also found that it was safe to infer from the large quantity of drugs that the drugs were intended for trafficking and it

was not a case of mere passive possession. There was overwhelming evidence for the learned trial judge to find not only knowledge and possession but also trafficking of the proscribed drug as defined under s 2 of the DDA to require his explanation and to reject what was preferred in defence.

[13] The appellants herein were found to have had actual physical possession of the drugs. The packets of drugs were strapped to their bodies and concealed by their clothing. An irresistible inference that the appellants had the prerequisite knowledge that the plastic packets contained dangerous drugs may be made from evidence of the method employed to convey or transport the drug such as an attempt to carefully conceal the drug which may indicate an intention to avoid detection (see *Teh Hock Leong v Public Prosecutor* [2008] MLJU 284; [2008] 4 CLJ 764). Such method and way of concealment is corroborative evidence of knowledge (see *Wjchai Onprom v Public Prosecutor* [2006] 5 MLJ 415; [2006] 3 CLJ 724). Thus on the evidence we find that the learned judicial commissioner had not erred in inferring that the appellants had knowledge that the plastic packets contained dangerous drugs. Further there was the observation made by the learned judicial commissioner that the contents of the plastic packets were visible to the naked eye and this was confirmed by the first appellant who described the contents of the plastic packets as 'Benda berharga ini bentuknya warna putih dalam plastik warna putih' (see p 183 of the appeal record).

[14] Insofar as the evidence of the appellants' conduct at the time of arrest which counsel submitted was reasonable in the circumstances, we find that the evidence of conduct was not very significant as the drugs were recovered from the bodies of the appellants from which knowledge of the drugs can be reasonably inferred. In *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19; [2009] 1 CLJ 717 the drugs were tucked away in front of the jeans worn by the appellant. With regard to the evidence of conduct the Federal Court said, inter alia, as follows:

> … the evidence of conduct in this case is not very significant in view of the manner in which the appellant carried the drugs on his person from which it can reasonably be inferred that he had knowledge of the drugs in his possession.

We find that the learned judicial commissioner had not erred in taking into consideration the appellants' conduct together with the manner in which the drugs were carried in coming to the finding that the appellants knew of the drugs in their possession.

[15] With regard to the submissions that the drugs belonged to third parties we were of the view that for the offence of trafficking under s 39B of the Act the issue of ownership of the drugs is irrelevant. Further learned counsel conceded that the defence had not put their case during the prosecution case. Thus there

is merit in the learned judicial commissioner's finding that the involvement of third parties was an afterthought. Once there is the act of transportation and so long as its purpose is to transfer possession for some other person in contradistinction to an intention to keep the drug solely for one's own consumption, the offence is completed. Whether the transporter achieves his purpose is irrelevant to his guilt of the offence of trafficking (*Lau Chi Sing v Public Prosecutor* [1989] 1 MLJ 5; [1988] 1 LNS 187). An offence under s 39B of the Act is proven when the court is satisfied beyond a reasonable doubt that the offender was in possession of dangerous drugs. With proof of care and custody being the prerequisites, and once this minimal element is proven and the operation of the presumption under s 37(da) is triggered, the offence of trafficking would be established (per Abdull Hamid Embong FCJ in *Isidro Leonardo Quito Cruz v Public Prosecutor* [2013] 2 MLJ 1; [2013] 2 CLJ 1025).

[16] On a totality of the evidence we find no reason to interfere with the findings of the learned judicial commissioner that the defence had failed to rebut the presumption under s 37(da) and had also failed to raise any reasonable doubt in the prosecution case. For the reasons stated above we dismissed the appeals and affirmed the convictions and sentences.

Appeals dismissed.

Reported by Ashok Kumar